

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CLAUDIA RODRIGUEZ BORTON, et al.

Plaintiffs

v.

HON. MIGUEL PEREIRA CASTILLO, et al.,

Defendants

CIVIL NO. 06-1754 (FAB)

MEMORANDUM AND ORDER

Pending before the Court is the defendants' motion for summary judgment (Docket No. 109) and the plaintiffs' opposition to the motion for summary judgment (Docket No. 128). Jury trial is currently scheduled for January 12, 2009. (Docket No. 155.)

The plaintiffs' claims under the Eighth Amendment are hereby dismissed for lack of applicability. The deceased in this case, Mr. Karl Michael Rodríguez González, was a pretrial detainee. (Docket No. 1.) In an earlier report and recommendation issued by a magistrate judge (Docket No. 26.), rendered moot by the submission of an amended complaint (Docket No. 56), plaintiffs were notified that the Eighth Amendment does not apply to pretrial detainees. The report and recommendations also advised that "the due process clause of the Fourteenth Amendment reflects the constitutional right that was allegedly infringed here, rather than the Eighth Amendment." Id. (case citations omitted). This Court agrees with the analysis in the report and recommendations, and

Civil No. 06-1754 (FAB)

2

therefore dismisses the plaintiffs' claims under the Eighth Amendment.¹

The Court also dismisses all claims pursuant to 42 U.S.C § 1983 brought by surviving family members (those plaintiffs that are the siblings, the mother, and the grandmother of the deceased) for lack of standing.² The Court agrees with the magistrate judge's analysis in the report and recommendation that surviving family members cannot recover damages when the allegedly unconstitutional action is not aimed at the family relationship. (Docket No. 26) (citing Docket No. 10, at 5); see Ortiz v. Burgos, 807 F.2d 6 (1st Cir. 1986).

IT IS SO ORDERED.

San Juan, Puerto Rico, December 18, 2008.

s/ Francisco A. Besosa
FRANCISCO A. BESOSA
UNITED STATES DISTRICT JUDGE

¹ Note that the Court does not dismiss any existing claims under the Fifth or Fourteenth Amendments.

² The Court's dismissal of family members' claims under section 1983 does not include the claims brought by the deceased's heirs for the damages suffered by Karl Michael Rodriguez. See Rivera-Quinoes v. Rivera-Gonzales, 397 F.Supp.2d 334, 341-42 (D.P.R. 2005).